

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #15	CCRB Case #: 201703129	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/21/2017 5:30 PM	Location of Incident: Outside of § 87(2)(b) 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 10/21/2018	EO SOL 10/21/2018	
Date/Time CV Reported Sun, 04/23/2017 12:52 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 04/23/2017 12:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Eric Bernard	19619	958308	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Lamont Asencio	24128	950027	046 PCT
2. SGT John Pirando	01343	943685	046 PCT
3. SGT Daniel Tirado	4953	937635	046 PCT
4. SGT Alexis Fernandez	02194	932633	046 PCT
5. SGT Shawndra Smith	03638	937564	046 PCT
6. POM John Gaschler	21962	920321	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eric Bernard	Force: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Eric Bernard	Force: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Eric Bernard	Discourtesy: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.POM Eric Bernard	Abuse: At the 46th Precinct stationhouse, Police Officer Eric Bernard did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
E. Officers	Abuse: At the 46th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

Case Summary

On April 23, 2017, § 87(2)(b) called the CCRB Call Processing System and filed this complaint.

On April 21, 2017, at approximately 5:30 p.m., § 87(2)(b) was walking in the vicinity of § 87(2)(b) in the Bronx with her § 87(2)(b)-old daughter. § 87(2)(b) was approximately two months pregnant at the time of this incident. § 87(2)(b) testified that her daughter ran across Field Place without her, and that when § 87(2)(b) crossed Field Place, she verbally scolded her daughter but did not physically touch her. PO Eric Bernard of the 46th Precinct was standing across the street, and he testified that he saw § 87(2)(b) strike her daughter in the face.

PO Bernard and his partner, PO Lamont Asencio of the 46th Precinct, approached § 87(2)(b). PO Bernard spoke to § 87(2)(b) about striking her daughter. § 87(2)(b) testified that one of her relatives, § 87(2)(b) approached and asked what was going on. § 87(2)(b) alleged that PO Bernard pushed § 87(2)(b) in the chest, causing him to move back a couple of steps (**Allegation A**).

§ 87(2)(b) alleged that PO Bernard then focused his attention to her and forcefully pushed her in the center of her chest, causing her back to make contact with a brick wall (**Allegation B**). § 87(2)(b) alleged that PO Bernard grabbed her arms to turn her around and forcefully pushed her on her back, causing the whole front of her body to make contact with the wall (**subsumed into Allegation B**). § 87(2)(b) was secured in handcuffs. PO Bernard escorted § 87(2)(b) to a marked police vehicle. § 87(2)(b) alleged that when she requested to leave her keys with her relatives, PO Bernard told her, “Shut the fuck up.” (**Allegation C**).

§ 87(2)(b) was transported to the 46th Precinct stationhouse and was lodged in a holding cell. § 87(2)(b) alleged that she requested medical attention from PO Bernard, but he responded that § 87(2)(b) was lying and did not provide medical attention (**Allegation D**). § 87(2)(b) alleged that she requested medical attention from approximately five or six unknown officers, but each officer told her to speak with PO Bernard, and none of them provided her medical attention (**Allegation E**). Approximately six hours after § 87(2)(b) was originally lodged, medical attention was called for her and EMS transported her to § 87(2)(b). Hospital personnel could not find the fetus’s heartbeat, but a follow-up appointment a few days later revealed that the fetus was healthy.

§ 87(2)(b) was charged with § 87(2)(b) (Board Review 01). No one else was arrested or issued a summons as a result of the incident.

There is no video footage of the incident.

This case surpassed the 90-day benchmark due to extensive efforts to identify witness and subject officers.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b) arrest.
- A Notice of Claim inquiry was submitted with the New York City Comptroller’s Office on August 16, 2017 (Board Review 02). The results will be added to the case file upon receipt.
- § 87(2)(b)

§ 87(2)(b)

- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint made by § 87(2)(b) (Board Review 05).
- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 06).
- PO Bernard has been a member of service for two years, and he has been the subject of five previous CCRB allegations, only one of which was substantiated. In CCRB 201602498, an ‘Abuse – premises and/or searched’ allegation was substantiated. The CCRB recommended formalized training, but the NYPD disposition remains unknown.

Potential Issues

- A victim in this case, § 87(2)(b) (Board Review 07), provided an unverified telephone statement to the CCRB. However, despite significant efforts to obtain a sworn statement from § 87(2)(b) he ultimately did not cooperate.
- The investigation attempted to obtain video footage from an NYPD TARU camera in the vicinity of the incident, but the footage was deleted and unable to be provided to the CCRB (Board Review 08).
- A witness in this case, § 87(2)(b) provided an unverified telephone statement to the CCRB. § 87(2)(b) indicated that she was not present for the alleged force, because she arrived only after § 87(2)(b) was already secured in handcuffs, that she did not recall hearing PO Bernard say anything to § 87(2)(b) and that she was not present at the 46th Precinct stationhouse. For these reasons, the investigation did not obtain a sworn statement from § 87(2)(b).
- There was one potential civilian witness to the allegations at the 46th Precinct stationhouse, § 87(2)(b). However, despite extensive efforts, the CCRB was unable to establish contact with § 87(2)(b) (see Investigative Actions).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) (Board Review 09) testified that she requested medical attention from approximately five or six police officers while she was lodged in a 46th Precinct stationhouse holding cell. However, § 87(2)(b) indicated that she did not recall what any of these officers looked like, nor did she know any of their names or badge numbers. The prisoner holding pen roster (Board Review 10) solely lists PO Bernard as the officer who guarded § 87(2)(b). No officer interviewed—PO Bernard (Board Review 11), PO Asencio (Board Review 12), Sgt. John Pirando of the 46th Precinct (Board Review 13), Sgt. Daniel Tirado of the 46th Precinct (Board Review 14), Sgt. Alexis Fernandez of the 46th Precinct (Board Review 15), Sgt. Shawndra Smith of the 46th Precinct (Board Review 16), and PO John Gaschler of the 46th Precinct (Board Review 17)—acknowledged that they heard § 87(2)(b) request medical attention. § 87(2)(b) indicated that solely one other prisoner, identified by the investigation as § 87(2)(b) observed

officers fail to obtain medical attention for her. Extensive efforts were made to obtain a statement from § 87(2)(b) but they were ultimately unsuccessful. § 87(2)(g)

Allegation A – Force: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard used physical force against § 87(2)(b)

It is undisputed that PO Bernard approached § 87(2)(b) and accused her of striking her § 87(2)(b)-old daughter. § 87(2)(b) testified that § 87(2)(b) approached and asked PO Bernard what he was doing. § 87(2)(b) alleged that PO Bernard pushed § 87(2)(b) on his chest, causing him to move backwards a couple of steps. In an unverified telephone statement to the CCRB, § 87(2)(b) also alleged that he was pushed in the chest.

PO Bernard acknowledged that a male civilian was at the scene of the incident, but he testified that he did not recall what any male civilian was doing during the incident. PO Bernard denied pushing § 87(2)(b) or any male civilian. PO Asencio testified that he did not recall PO Bernard having any physical interaction with a male civilian.

§ 87(2)(g)

Allegation B – Force: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard used physical force against § 87(2)(b)

It is undisputed that PO Bernard physically apprehended § 87(2)(b) for allegedly striking her daughter. § 87(2)(b) alleged that prior to handcuffing her, PO Bernard forcefully pushed her in the chest, causing her back to make contact with a wall. § 87(2)(b) further alleged that PO Bernard turned her around and forcefully pushed her in the back, causing the whole front of her body to make contact with the wall. § 87(2)(b) was approximately two months pregnant during the incident.

§ 87(2)(b) alleged that PO Bernard pushed § 87(2)(b) two to three times on the front of her shoulders, towards a wall, until § 87(2)(b) was cornered. § 87(2)(b) stated that he believed that § 87(2)(b) back made contact with the wall. § 87(2)(b) denied seeing any officer push § 87(2)(b) more than this.

§ 87(2)(b) (Board Review 20) provided an unverified telephone statement to the CCRB in which she described an officer pushing § 87(2)(b) but after § 87(2)(b) was already in handcuffs. § 87(2)(b) stated that she arrived at the scene after § 87(2)(b) had already been secured in handcuffs.

PO Bernard denied ever pushing § 87(2)(b). PO Asencio denied that PO Bernard pushed § 87(2)(b). Both PO Bernard and PO Asencio denied seeing § 87(2)(b) ever come into contact with a wall.

§ 87(2)(b) received medical treatment from Emergency Medical Services and § 87(2)(b) approximately six hours after this incident. § 87(2)(b) reportedly complained of five hours of abdominal pain after having been pushed (Board Reviews 18 and 19). § 87(2)(b) medical records did not document any injury, although an ultrasound was taken at § 87(2)(b) to check on the health of the fetus. No heartbeat was found in the fetus, but a follow-up a few days later revealed that the fetus was healthy.

§ 87(2)(g)

Allegation C – Discourtesy: Outside of § 87(2)(b) in the Bronx, Police Officer Eric Bernard spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) was escorted inside a police vehicle. § 87(2)(b) alleged that while being escorted, PO Bernard told her to “shut the fuck up.”

In his unverified telephone statement to the CCRB, § 87(2)(b) stated that he did not recall any officer saying anything to § 87(2)(b) as she was being escorted to the police vehicle. In her unverified telephone statement to the CCRB, § 87(2)(b) stated that she did not recall if any officer was saying anything to § 87(2)(b) as she was escorted to the police vehicle.

PO Bernard testified that he did not recall telling § 87(2)(b) to “shut the fuck up.” PO Asencio testified that he did not recall PO Bernard saying the alleged discourteous remark.

The supervisor who verified the arrest on scene, Sgt. John Pirando of the 46th Precinct, denied hearing PO Bernard make the alleged discourteous remark. Sgt. Pirando’s driver, PO John Gaschler of the 46th Precinct, did not recall the incident, including whether or not PO Bernard made the discourteous remark.

§ 87(2)(g)

Allegation D – Abuse of Authority: At the 46th Precinct stationhouse, Police Officer Eric Bernard did not obtain medical treatment for § 87(2)(b)

It is undisputed that PO Bernard did not obtain medical treatment for § 87(2)(b) but it remains disputed why he did not.

§ 87(2)(b) testified that at approximately 7:00 p.m. on April 21, 2017, while inside a 46th Precinct stationhouse holding cell, she told PO Bernard that she was two months pregnant, that she was experiencing sharp chest pains, and that she wanted an ambulance. § 87(2)(b) alleged that PO Bernard told her that she was lying and walked away from her without ever obtaining medical treatment for her.

§ 87(2)(b) acknowledged that approximately five minutes after her interaction with PO Bernard, an unknown officer explained that she could go to the hospital but that it would delay the process, and § 87(2)(b) agreed to not go to the hospital.

PO Bernard corroborated that § 87(2)(b) told him that she was pregnant and that her stomach hurt. PO Bernard testified that § 87(2)(b) did not say anything else, as far as he could recall. During his CCRB interview, PO Bernard was asked if he believed § 87(2)(b) when she told him that she was pregnant. PO Bernard responded by asking, “If I told you I was pregnant, would you believe me?”

PO Bernard testified that he asked § 87(2)(b) if she wanted medical attention, but she refused it, saying that she just wanted the process to be over. PO Bernard testified that he did not obtain medical treatment for § 87(2)(b) because it was her right to refuse it. PO Bernard testified that he tried to get § 87(2)(b) to sign her refusal of medical attention on a medical treatment of prisoner form, but he indicated that § 87(2)(b) refused to sign the form. A request for the medical treatment of prisoner form was returned with a notation reading that it was not on file.

At 12:11 a.m. on April 22, 2017, an ambulance was called for § 87(2)(b). PO Bernard did not call for the ambulance—he had ended his tour at 11:35 p.m. on April 21, 2017. § 87(2)(b) was treated by Emergency Medical Services (“EMS”). § 87(2)(b) reported to EMS that she had been experiencing chest pain for five hours. § 87(2)(b) was transported to § 87(2)(b) where she again complained of chest pain. § 87(2)(b) reported that she had been experiencing the pain since about 7:00 p.m. on April 21, 2017, and that it was the result of being pushed. An ultrasound revealed no cardiac activity, a possible fetal demise, and § 87(2)(b) was advised to return in 48 hours to check on the health of the fetus. § 87(2)(b) returned to the hospital a few days later, and it was discovered that the fetus was healthy.

§ 87(2)(g)

Allegation E – Abuse of Authority: At the 46th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(g)

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

